

RECEIVED
CENTRAL FAX CENTER

JUL 23 2007

Attorney Docket No.:10121/04903 (96-P0065CON2)

REMARKS

Claims 39-58 are pending in the present application. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable.

Applicant confirms that claims 1-38 have previously been cancelled and only claims 39-58 are currently pending in the present application.

Claims 39-53 and 55-58 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,119,031 to Crowley, hereinafter referred to as the '031 patent in view of claims 1-27 of U.S. Patent No. 6,343,227 to Crowley, hereinafter referred to as the '227 patent. However, Applicant notes that the present application is a continuation of the referenced '031 and '227 Patents and that these references are not available as prior art. It is therefore submitted that this non-statutory obviousness-type double patenting rejection is impermissible. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Claims 39-51 and 53-58 stand rejected as anticipated by U.S. Patent No. 5,842,995 to Mahadevan-Jansen et al. ("Mahadevan").

Mahadevan teaches an optical probe for measuring Raman spectra in vivo to detect tissue abnormalities and precancers. (See Mahadevan, Abstract). However, it is noted that Mahadevan fails to teach or suggest "a spectrometer comprising a distal end, said distal end comprising a light emitting portion providing ultraviolet (UV) light", as recited in claim 39. Rather, the Mahadevan device is directed to the illumination of a sample with a specific "electromagnetic radiation wavelength from the near infrared to produce a Raman spectrum shifted from the illumination wavelength." (See Mahadevan, col. 8, ll. 1-9). Specifically, Mahadevan notes that

Attorney Docket No.:10121/04903 (96-P0065CON2)

“[t]he illumination wavelength may be about 700-850 nm, and more specifically about 790 (+/- 10) μ m.” (See Mahadevan, col. 8, ll. 7-9). It is therefore noted that Mahadevan teaches a light emitting portion that provides light wavelengths that lie outside of the ultraviolet wavelength spectrum, which, by definition comprises wavelengths of 1 nm to 400 nm. Rather, Mahadevan only discloses the employment of an “excitation light at 790 nm”, which lies in the infrared spectrum. (See Mahadevan, col. 12, ll. 25-28). Additionally, it is noted at no point in the Mahadevan patent does Mahadevan teach or suggest a light emitting portion that provides UV light.

Thus, it is respectfully submitted that Mahadevan does not disclose or suggest “a spectrometer comprising a distal end, said distal end comprising a light emitting portion providing ultraviolet (UV) light”, as recited in claim 39. Accordingly, it is respectfully requested that the Examiner should withdraw the 35 U.S.C. § 102(a) rejection of claim 39. Because claims 40-51 and 53-54 depend from and, therefore, include the limitations of claim 1, it is respectfully submitted that these claims are also allowable.

Claim 55 recites limitations substantially similar to those of claim 39, including “generating ultraviolet (UV) light through said light emitting portion to illuminate said tissue”. Thus, it is respectfully submitted that claim 55 is allowable for the same reason noted above in regard to claim 39 and the Examiner should withdraw 35 U.S.C. § 102(a) rejection of claim 55. Because claims 56-58 depend from and, therefore, include the limitations of claim 55, it is respectfully submitted that these claims are also allowable.

Claims 39-58 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mahadevan in view of U.S. Patent No. 5,503,559 to Vari (“Vari”). In support of the rejection, the Examiner notes that Mahadevan teaches the application as claimed with the exception of the production of the window from polystyrene, polycarbonate or methyl-methacrylate but that Vari corrects this deficiency.

Attorney Docket No.:10121/04903 (96-P0065CON2)

Initially, it is noted that independent claims 39 and 55 do not recite the substantially transparent window noted above, and that these limitations are only recited in dependent claims 51 and 52. In light of the above, it is submitted that Mahadevan fails to teach or suggest "a spectrometer comprising a distal end, said distal end comprising a light emitting portion providing ultraviolet (UV) light", as recited in independent claim 39. Furthermore, as noted above in regard to the 102 (a) rejection, modifying the Mahadevan device to employ a light emitting portion that emits ultraviolet light would be detrimental to the Raman spectroscopy method of the Mahadevan device. It is submitted that Vari fails to cure the above noted deficiencies of the Mahadevan device and that claim 39 is allowable over Mahadevan and Vari for at least this reason. It is submitted that claims 40-54, which depend from, and therefore include all of the limitations of, claim 39 are also allowable over Mahadevan and Vari.

Furthermore, as noted above, claim 55 recites limitations substantially similar to claim 39. It is therefore submitted that claim 55 and its dependent claims 56-58 are also allowable over Mahadevan and Vari.

RECEIVED
CENTRAL FAX CENTER

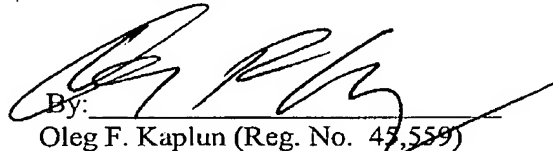
JUL 23 2007

Attorney Docket No.:10121/04903 (96-P0065CON2)

CONCLUSION

In light of the foregoing, Applicant respectfully submits that all of the presently pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

Dated: July 23, 2007
By: _____
Oleg F. Kaplun (Reg. No. 45,559)

Fay Kaplun & Marcin, LLP
150 Broadway, Suite 702
New York, New York 10038
Tel: (212) 212-619-6000
Fax: (212) 619-0276